

**REMARKS**

New claims 56-64 have been added. Claims 1, 5-30, and 35-64 are pending. In the Office Action, claims 1, 5-11, 14-30, 35-43 and 45-55 were rejected under 35 U.S.C. § 103(a) based on U.S. Patent No. 6,491,928 to Smith III ("Smith") in view of U.S. Patent No. 6,635,704 to Engel et al. ("Engel"). In addition, claims 12 and 13 were rejected under 35 U.S.C. § 103(a) based on Smith in view of Engel and further in view of GB 2307862 to Jehan ("Jehan"), and claim 44 was rejected under 35 U.S.C. § 103(a) based on Smith in view of Engel and further in view of U.S. Patent No. 6,338,839 to Auguste et al. ("Auguste"). Applicant respectfully traverses these rejections.

Applicant respectfully submits that the claim rejections under § 103 do not set forth a prima facie case of obviousness. To establish a prima facie case of obviousness, three basic criteria must be met. First, the prior art reference or references, taken alone or combined, must teach or suggest each and every element recited in the claims. See M.P.E.P. § 2143.03. Second, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to combine the references in a manner resulting in the claimed invention. See M.P.E.P. § 2143. Third, a reasonable expectation of success must exist. See M.P.E.P. § 2143.02. Moreover, each of these requirements must "be found in the prior art, and not based on applicant's disclosure." M.P.E.P. § 2143.

In addition, any suggested combination must not teach away from the cited references. *In re Gordon*, 733 F.2d 900, 902, 221 USPQ 1125, 1127 (Fed. Cir. 1984)

(finding no suggestion to modify a prior art device where the modification would render the device inoperable for its intended purpose); *In re Spinnoble*, 405 F.2d 578, 587, 160 USPQ 237, 244 (CCPA 1969) (references taken in combination teach away since they would produce a “seemingly inoperative device”).

Regarding independent claims 1, 27, 54 and 55, neither Smith, Engel, nor any combination thereof, discloses or suggests “at least two non-adhesive layers...permanently bonded to [an] adhesive matrix,” as recited in claims 1, 54 and 55, or a “first non-adhesive layer and [a] second non-adhesive layer being permanently bonded together by [an] adhesive matrix,” as recited in independent claim 27. Given the recitation of “permanently bonded” in claims 1, 27, 54, and 55, those claims relate to subject matter involving layers and an adhesive matrix that are not separated from one another during use. Such subject matter includes direct bonded arrangements (with the adhesive matrix in direct contact with one or more of the layers) and/or non-direct bonded arrangements (with the adhesive matrix not being in direct contact with one or more of the layers).

Smith discloses first and second substrate layers and a cleansing composition disposed between two substrate layers. Col. 2, lines 25-35, and Col. 10, lines 21-22. As apparently recognized by the Examiner, Smith does not disclose an adhesive matrix, let alone an adhesive matrix containing at least one active agent. Office Action at 3.

The Office Action cites Engel for the asserted disclosure of an adhesive matrix containing particles. Further, the Office Action asserts that it would have been obvious to include the asserted “adhesive cleansing matrix of Engel in the cleansing article of

Smith to prepare a cleansing article comprising two non-adhesive layers with an adhesive cleansing layer in between.” (Office Action at 4-5).

Neither of the references discloses “at least two non-adhesive layers...” “permanently bonded” to [an] adhesive matrix or “permanently bonded” by an adhesive matrix. Smith fails to disclose an adhesive matrix at all, and the purported adhesive matrix of Engel is not “permanently bonded” to “at least two non-adhesive layers” as required by independent claims 1, 54 and 55. In fact, Engel teaches away from the Examiner’s proposed combination because the adhesive of Engel is intended to be placed in contact with the skin of a user for at least one minute and then be “pull[ed]...away from the skin thereby removing unwanted matter such as comedones, unwanted hair follicles, dirt, oil, dead skin, and debris.” Col. 2, lines 20-35. Thus, there is no disclosure or suggestion in either Smith or Engel of at least two non-adhesive layers being “permanently bonded.”

Similarly, there would have been no suggestion or motivation to place the adhesive strip of Engel between the layers of Smith, as apparently proposed in the Office Action, because it would be contrary to Engel’s stated objective of placing an adhesive in contact with skin and pulling substances from the skin. In other words, the purported adhesive matrix of Engel cannot be *permanently* bonded to at least two layers when it’s sole intended use is to be placed in contact with skin. There is simply no conceivable reason why one of ordinary skill in the art would look to Engel for an adhesive matrix associated with “permanently bonded” non-adhesive layers.

Additionally, the Examiner used improper hindsight reasoning to combine the references without identifying any legally proper suggestion or motivation for the combination. No such motivation is provided by either Smith or Engel. Because neither Smith nor Engel discloses or suggests each and every claimed element and Engel teaches away from the Examiner's proposed combination, there is simply no reason why one of ordinary skill in the art would have used Engel's skin-contacting adhesive between the non-adhesive layers of Smith, as proposed in the Office Action.

Furthermore, there would have been no suggestion to modify Smith's cleansing article to include a skin-contacting adhesive because there would not have been any reason to adhere Smith's cleansing article to skin. For example, Smith teaches a cleansing article intended to be rubbed on an area to be cleansed (col. 1, lines 18-20), so any adherence to skin would more than likely destroy the operating principles of Smith's cleansing article.

For at least the foregoing reasons, independent claims 1, 27, 54 and 55 are allowable over Smith and Engel. The other cited references do not supply any of the short-comings of Smith and Engel. Thus, claims 5-11, 14-26, 28-30, 35-43 and 45-53 are allowable at least due to their dependency from one of independent claims 1, 27, 54 or 55. Applicants therefore request that the rejection of claims 1, 5-30, and 35-55 under 35 U.S.C. § 103(a) be withdrawn and that the claims be allowed.

By this amendment, new claims 56-64 are added. Claims 56-64 are allowable over the cited art for at least reasons similar to those discussed above for claims 1, 54, and 55. In particular, none of the references discloses or suggests "two support layers

being permanently bonded to [an] adhesive matrix," as cited in independent claims 56 and 64.


Applicants respectfully request reconsideration of this application withdrawal of the claim rejections and the timely allowance of the pending claims.

The Office Action contains numerous characterizations of the claims and the related art, with which Applicant does not necessarily agree. Unless expressly noted otherwise, Applicant declines to subscribe to any statement of characterization in the Office Action.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,  
GARRETT & DUNNER, L.L.P.

By:   
F. Chad Copier  
Reg. No. 54,047

Dated: April 29, 2005